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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

STATE OF CALIFORNIA et al.;

Plaintiffs,

v.

**DONALD J. TRUMP, in his official capacity
as President of the United States of America
et al.;**

Defendants.

Case No. 4:20-cv-1563-HSG

**PLAINTIFFS' NOTICE OF
SUPPLEMENTAL AUTHORITY**

Judge: Hon. Haywood S. Gilliam, Jr.
Trial Date: None Set
Action Filed: March 3, 2020

1 Plaintiff State of California respectfully notifies the Court that the Ninth Circuit has issued
 2 decisions in *State of California, et al. v. Trump, et al.*, Nos. 19-16299 and 19-16336 (9th Cir. June
 3 26, 2020) (*States Slip Op.*) and *Sierra Club, et al. v. Trump, et al.*, Nos. 19-16102 and 19-16300
 4 (9th Cir. June 26, 2020) (*Sierra Club Slip Op.*), attached hereto as Exhibits A and B respectively.
 5 The Ninth Circuit panel affirmed this Court's orders granting California's and New Mexico's (the
 6 States) and the Sierra Club plaintiffs' motions for partial summary judgment challenging the
 7 diversion of fiscal year (FY) 2019 funds transferred toward border wall construction under
 8 sections 8005 and 9002 of the Department of Defense Appropriations Act, 2019, Pub L. No. 115-
 9 245, 132 Stat. 2981 (2018) in the related cases *State of California, et al. v. Trump, et al.*, No. 19-
 10 cv-872-HSG (N.D. Cal. June 28, 2019) and *Sierra Club, et al. v. Trump, et al.*, No. 19-cv-892-
 11 HSG (N.D. Cal. June 28, 2019). The Ninth Circuit panel determined that: (a) the States
 12 established Article III standing to challenge the transfers due to the injury caused to the States'
 13 environment, wildlife, and sovereign interests in the enforcement of their environmental laws,
 14 *States Slip Op.* 20-30; (b) the States were within the zone of interests of Sections 8005 and 9002
 15 to challenge the transfers, *States Slip Op.* 30-36; and (c) the Sierra Club plaintiffs had
 16 constitutional and equitable causes of actions not subject to the zone of interests test, and even if
 17 the zone of interests test applied, the Sierra Club plaintiffs were within the zone of interests of the
 18 Appropriations Clause, *Sierra Club Slip Op.* 36-40. On the merits, the panel determined that the
 19 transfers are unlawful because the border wall construction did not meet the criteria of sections
 20 8005 and 9002 since it: (a) was not "unforeseen;" (b) was not a "military requirement[.]" and (c)
 21 was an "item for which funds [were] requested" and "denied by the Congress." *States Slip Op.*
 22 36-48.

23 The Ninth Circuit also affirmed the district court's order granting a permanent injunction to
 24 the Sierra Club plaintiffs. *Sierra Club Slip Op.* 40-45. The Ninth Circuit determined that this
 25 Court's denial of the States' request for injunctive relief was not an abuse of discretion. *States*
 26 *Slip Op.* 48. As discussed previously, the States' injuries arising from the transfer of FY 2020
 27 funds at issue in the pending motion for summary judgment are distinct from the injuries at issue
 28

1 in the litigation surrounding the FY 2019 transfers. *See, e.g.*, ECF No. 55 at 23-25; ECF No. 65
2 at 21-25.

3
4 Dated: June 29, 2020

Respectfully submitted,

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